

**Application No. UP-662-05, James D. and Mia M. Cunningham:** Request for a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane in the Queens Lake subdivision. The property, further identified as Assessor's Parcel No. 7A2-10-EH-9, is zoned RR (Rural Residential) and is designated for Low Density Residential development in the Comprehensive Plan.

**Timothy C. Cross, AICP, Principal Planner**, reviewed the staff report dated February 28, 2005 in which the staff recommended approval.

**Mr. Simasek** asked if the deed restriction due to the lack of public sewer would be removed if public sewer were provided in the future. **Mr. Cross** stated he believes the restriction could be worded in such a way that would occur. **Mr. Barnett** advised that the County could consent to allow the owner to file an amended deed in order to remove the restriction automatically should public sewer become available.

**Mr. Ron Buehl**, Case Design & Remodeling, spoke in behalf of the applicants. The applicants, Mr. and Mrs. Cunningham, he said, have already begun the process to remove the deed restriction at the appropriate time. The proposal includes compliance with the owners' desire to match the vertical board and batten siding on the existing garage. **Mr. Simasek** noted that the plan submitted by **Mr. Buehl** calls for the stairwell to comply with the Fairfax County Code and he suggested Mr. Buehl comply with the York County Code. **Mr. Buehl** responded he was instructed by both York and James City Counties to observe the Fairfax County Code.

**Mr. Barba** moved the adoption of proposed Resolution PC05-14.

On motion of Mr. Barba, which carried 7:0, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT  
FOR A DETACHED ACCESSORY APARTMENT AT 104 NORTH WILL  
SCARLET LANE

WHEREAS, James D. and Mia M. Cunningham have submitted Application No. UP-662-05, which requests a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane (Route 1311) and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 9th day of March, 2005, that Application No. UP-662-05 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize construction of an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097) subject to the following conditions:

1. This Special Use Permit shall authorize construction of an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097).
2. Building plans for the garage shall be submitted to and approved by the York County Department of Environmental and Development Services, Division of Building Regulation, prior to the commencement of any construction activities. Said plans shall be in substantial conformance with the plot plan and building elevations submitted by the applicant, copies of which shall remain on file in the Planning Division.
3. Prior to the issuance of a building permit for the garage/apartment, the applicant shall either expand the existing septic system in accordance with the standards of the Virginia Department of Health or record with the Clerk of the Circuit Court a deed restriction on the property limiting the combined occupancy of the principal dwelling unit and the accessory apartment to no more than six (6) individuals.
4. Construction and operation of the accessory apartment shall be in compliance with the performance standards set forth in Section 24.1-407 of the Zoning Ordinance.
5. The height of the garage/apartment shall not exceed 1.25 times the height of the principal dwelling on the property.
6. The minimum front yard building setback requirement for the garage/apartment shall be fifty feet (50').
7. Issuance of this Special Use Permit does not supersede any legally recorded restrictive covenants that may apply to the subject property, nor does it relieve the applicant and/or property owner of any obligation to secure approvals that may be required by a homeowners' association in accordance with said covenants.

8. In accordance with Section 24.1-407(k) of the County Zoning Ordinance, prior to issuance of a building permit for the accessory apartment, the applicant shall be responsible for recording a deed restriction document with the Clerk of the Circuit Court stipulating that the subject accessory apartment will be used, occupied and maintained in accordance with standards and restrictions set forth in Section 24.1-407 of said Ordinance. A Court-certified copy of the document shall be submitted to the County at the time of building permit application.
9. Notwithstanding the customary two-year deadline for establishing special uses set forth in Section 24.1-115©(1), failure to establish the accessory apartment within three (3) years of the date of approval shall cause the permit to terminate automatically.
10. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this special use permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.

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